

The Court of JM 1st Class, Ramgarh
Present: Mrs. Smriti Tripathi
Judicial Magistrate
19th December, 2022
District: Ramgarh
G.R. Case No. 957/2018
CNR No. JHRG030035912018
Mandu(WB) PS Case No. 256/2018

Informant Represented By	State (Through Ankit Kumar) Smt. Manju Kachchap, Id. APP
Accused Represented By	1. Parasnath Mahto s/o Kartik Mahto, male aged about 40 years, r/o Mauza Aara (Baghlata), PS Mandu, District Ramgarh[A1] Sri Jagarnath Mahto, Ld. Advocate

Date(s) of Offence	08.09.2018
Date of FIR	08.09.2018
Date of Chargesheet	31.10.2018
Date of substance of accusation	17.06.2019
Date of Commencement of evidence	16.08.2019
Date when Judgment is reserved	15.12.2022
Date of Judgment	19.12.2022
Date of Sentencing Order, if any	19.12.2022

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of detention undergone during trial for purpose of s. 428, CrPC
A1	Parasnath Mahto	12.09.2018	12.09.2018, 12.04.2019	s. 341/34, IPC	Convicted	15 days SI, ₹300/- fine, 7 days SI for default in payment of fine	none
				s. 504 /34 of IPC	Convicted	1 month SI, ₹3000/- fine, 15 days SI for default in payment of fine	

				s. 323/34, IPC	Acquitted	none	
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J U D G M E N T

1. The aforementioned accused person (hereinafter referred to as "**A1**") is facing trial for substance explained u/s. 341/34, 323/34, 504/34 of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").
2. The compendious **case of the prosecution** as sourced from the written report of Ankit Kumar (hereinafter referred to as the "**informant**") is that on 08.09.2018, at about 12:30 PM, he went to DAV School to bring his sister home but when he reached the school gate, A1 and Ashish Karmali, came out of a Scorpio vehicle bearing registration no. JH01BC-7551 armed with *lathi-danda* and assaulted and verbally abused the informant due to which he sustained head and ear injuries and became unconscious and fell down on the ground alongwith his sister and thus, this case.
3. After Investigation, the Investigating Officer submitted **charge-sheet** bearing no. 177/2018 dated 31.10.2018 against A1 for the offence u/s. 341/34, 323/34, 504/34 of the IPC and accordingly, **cognizance** was taken under the same sections against him by the Id. predecessor court on 15.01.2019.
4. On 17.06.2019, **substance of accusation** was explained u/s. 341/34, 323/34, 504/34 of the IPC to A1 in simple Hindi to which he pleaded not guilty and claimed to be tried and the record was advanced for prosecution evidence.
5. After closing the **prosecution evidence** on 19.09.2022, the statement of A1 was recorded u/s. 313 of CrPC on the same day in which he denied the material available against him and claimed to be innocent.
6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed and the matter was posted for arguments.
7. The Id. Assistant Public Prosecutor submitted that the case is fully made out against A1 and the PWs, most of whom are eye witnesses have fully supported the prosecution case. Relying upon this, prayer was made to award A1 the stringest punishment.

8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the prosecution has failed to prove the guilt of A1 beyond reasonable doubt, and he thus, deserves to be acquitted. It was after this stage, that the court observed that the other accused person in this case namely Ashish Karmali informed the court that his age was 19 years old which, if true, would imply that on the date of the alleged offence, he was a minor. Thus, the court recorded his statement but orally instructed him to bring documents related to his matriculation and other documents and ID proof related to his age, and split his record for proper age determination as under the JJ Act, 2015 and proceeded to pronounce judgment against A1.

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 beyond reasonable doubt or not. On the bedrock of the substance explained, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Did A1 do any act with the knowledge that he is likely thereby to cause hurt to the informant?

9.2 Did A1 voluntarily obstruct the informant so as to prevent him from proceeding in any direction in which the informant had a right to proceed?

9.3 Did A1 insult the informant intentionally, knowing that such insult was likely to provoke him to break the public peace?

9.4 Can there be conviction of a sole accused u/s. 34, IPC?

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, which are enlisted below:

List of Prosecution/Defence Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Kuldip Prasad	Related Witness [Father of Informant]
PW2	Ankit Kumar	Interested Witness [Informant]
PW3	Monika Kumari	Eye Witness
PW4	Ankita Kumari	Eye Witness
PW5	Durga Shankar Mandal	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material ExhibitsA. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Ext. 1	<i>Fardbeyan</i>
2.	Ext. P1/1/PW5	Signature on <i>fardbeyan</i>
3.	Ext. P1/2/PW5	Registration of case
4.	Ext. P2/PW5	Formal FIR

B. Defence:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

11. *Did A1 do any act with the intention of or knowledge that he is likely thereby to cause hurt to the informant?*

11.1 The allegations concerning s. 323, IPC, as made out in Ext. 1 are that A1 alongwith another lashed at the informant with *lathi dunda* as a result of which he fell on the ground.

11.2 PW01 deposed that on 08.09.2018 at about 12:00 PM his daughter Monika Kumari had to back to her house from her school, and his son Ankit Kumar was waiting to pick her up alongwith her friend near Aara DAV School; A1 and one Ashish Karmali reached there on a Scorpio and the said Ashish Karmali got down from the vehicle and started fighting with the informant and A1 joined. During course of said altercation, the informant sustained injuries on his forehead and ear. After this, PW1 took him to hospital where he was treated. He deposed that at the time of the alleged incident, he was at his home and his son informed him about the said incident. Further that, on the day after this incident, FIR was lodged. In his cross-examination, he deposed that there was no previous enmity between A1, his accomplice and his son and the main reason of the altercation was that they approached his son and asked him what he is doing with the girl and then altercation ensued.

11.3 PW02, amongst other things, deposed that on the said date and time as he, PW03 and PW04 were standing at the place of alleged incident, one black colored Scorpio stopped there. The persons inside the vehicle were asking someone to come to that place as PW02 stood there. Then, the A1 and Ashish Karmali got down from the vehicle and started beating PW02. In course of this altercation PW03 was pushed and she fell on the road alongwith PW02. Blood started oozing out of the forehead and ear of PW02 due to the fall after which, A1 and Ashish Karmali fled away from that place on their vehicle. He further deposed that he then informed his father about the incident who came to the place of the said incident and took him to a medical store where first aid was administered to him, and he then went to Kujju Police Station for lodging an FIR. Just like PW1, he also deposed in his cross-examination that prior to the said incident, he had never met A1 and his accomplice and there was no prior rift between them. Also, that PW1 and PW2 did not give any medical document to the Investigating Officer or filed before the court regarding the first aid administered to him. PW03 is also an eye witness who also sustained injuries and has somewhat supported the version of PW02 and Ext. 1.

11.4 Shedding more light on the alleged incident she has deposed that as PW02 and PW04 were standing at the place of occurrence, a black colored vehicle approached them, the riders of which were saying 'come here'. But as they did not go there, Ashish Karmali got down from the vehicle and gave one slap to her brother Ankit. After this, A1 also came there with a stick and pushed her due to which she fell on the ground and hit PW02 with a stick due to which his ear numbed and he also sustained injuries on his forehead. As the altercation worsened, teachers from DAV school came there and her brother called his father who came there and put end to the altercation. Thereafter, first aid was administered to her brother in Ramgarh and her father gave a written statement at Kujju OP for the said incident.

11.5 PW04's deposition fully corroborated the statement of PW03. PW04 claims to have left the place of alleged incident after the informant's father took him for his first aid treatment.

11.6 Thus, as to the allegations concerning s. 323, IPC, the prime allegation against A1 is that he lashed at the informant as a result of which, he sustained injuries. PWs 01-04 have all supported this allegation and corroborated the prosecution's version of events. Only PW01 is a hearsay witness and rest three PWs are eye witnesses to this. PW05, the Investigating Officer has deposed that the *lathi/dunda* from which hurt has alleged to be caused by A1 has not been recovered in his investigation. It is also the

case of PWs 02-04 that the informant was administered first aid in a medical store. But no bill, etc. has been produced regarding the purchase of articles of first aid. PW02 has himself deposed that he did not show any such bill to even the Investigating Officer during investigation.

11.7 Thus, this court is of the considered opinion that **the prosecution has failed to raise a presumption that A1 did any act with the intention of or the knowledge that he is likely thereby to cause hurt to the informant.**

12. *Did A1 voluntarily obstruct the informant so as to prevent him from proceeding in any direction in which the informant had a right to proceed?*

12.1 Looking at depositions of PWs 01-04 read with Ext. 1 and as discussed in paragraph no. 11 of this judgment, there is no denying that the prosecution has reasonably raised a presumption that some form of altercation, did take place between the informant and A1 at the behest of A1 and his accomplice. Even though PW01 is not an eye witness, the other PWs and he himself has also deposed that after the alleged altercation took place, he reached the place of alleged occurrence. There is no variance in the statements of all the PWs on this point. All the PWs also claimed to identify A1 had he been present in the court and thus, there is no question about the identity of A1. Thus, this court is of the considered opinion that the prosecution has raised a presumption that A1 did obstruct the informant from proceeding in any direction he had the right to proceed on the alleged date, time and place.

12.2 The burden has now shifted on the defense side u/s. 102, The Indian Evidence Act, 1872 (Hereinafter referred to as the "**IEA**") to rebut the presumption raised by the prosecution. To this, during the course of arguments, the Id. defense counsel submitted that as a good Samaritan, when A1 and his accomplice saw PW02 standing there with two girls i.e. PW03 and PW04, they just stopped there to enquire about it and upon receiving a satisfactory reply, left that place. On the other hand, when this question was put to A1 during his examination u/s. 313, CrPC, he denied it, and did not say anything about just enquiring about the presence of the informant outside the school. The defense side has not been able to prove that they were not present at the place of alleged occurrence on the said time. They have not pleaded any *alibi* also. As to voluntarily restraining the informant is concerned, they have not explained there present at the alleged place of incident. No evidence or satisfactory explanation has been afforded to show that they did not obstruct the informant or that no altercation as alleged took place.

12.3 Thus, this court is of the considered opinion that **the prosecution has successfully proved the charged u/s. 341/34, IPC against A1.**

13. Did A1 insult the informant intentionally, knowing that such insult was likely to provoke him to break the public peace?

13.1 As far as the charges u/s. 504, IPC are concerned, the prosecution case, as made out in Ext. 1 that A1 and his accomplice hurled verbal abuses at the informant and then proceeded to hit them, the same finds support in depositions of the PWs as discussed in paragraph no. 11 of this judgment. The same stands corroborated and unrebutted. The eye witnesses have stood the test of their testimonies during their respective cross examinations. Although this court did not convict A1 u/s. 323, IPC, but that was due lack of recovery of the alleged weapon of offence and absence of bill of medicines and other supplies purchased from medical shop for first aid treatment. But that does not negate the testimonies of PWs which are unrebutted that A1 and his accomplice did start some kind of fight with the informant. Whether hurt was caused during that fight is a separate matter already considered in paragraph no. 11 of this judgment, but it definitely speaks to this court that some altercation did take place as alleged, and A1 and his accomplice hurled abuses at the informant, as alleged by him which falls u/s. 504, IPC. Thus, the prosecution has successfully raised the presumption of an offence having taken place u/s. 504, IPC.

13.2 the burden has now shifted upon the defense side u/s. 102, IEA to rebut this presumption. But for this, neither any evidence has been adduced by A1, nor has he explained the circumstances in his examination u/s. 313, CrPC. thus, the defense side has failed to rebut the presumption raised by the prosecution.

13.3 Thus, this court is of the considered opinion that **A1 insulted the informant intentionally, knowing that such insult was likely to provoke him to break the public peace.**

14. *Can there be conviction of a sole accused u/s. 34, IPC?*

14.1 Under section 34, IPC a person is convicted for the acts of another person if it is proved that both of them shared common intention. In the present case, apart from A1, one Ashish Karmali was also present and participating in the alleged offence for which he was facing trial till it was found by this court that he may have been a juvenile on the date of the alleged incident and thus, his trial was separated for proper inquiry into his age which would determine the future course of action against

him. But that would not negate the fact that the informant has alleged that he was also participating in the alleged crime and PWs have all deposed and corroborated the same. It is just that by virtue of his age, he is to be tried under a special law. This would not bar this court from proceeding against A1, who was an adult on the day of the alleged incident for the acts done by Ashish Karmali, once it is established that they shared a common intention. It is required that more than one person must share the common intention on which one must act and not that both must face trial in the same case which is not the case here due to technical reason of age of Ashish Karmali.

14.2 In the instant case, it has been deposed by PWs 02-24 that A1 and Ashish Karmali stopped their car near where the informant was standing with PW03 and PW04 and was asking someone to come to them. When the informant did not respond, first Ashish Karmali got down from the car and then A1 joined him. It appears that it was at this very moment that the common intention formed in the heads of both of them after which, they proceeded towards the informant unanimously and an altercation took place at their behest. The allegation on Ashish Karmali is that he slapped the informant and pushed PW03 and then A1 joined in. thus, it appears that in furtherance of this common intention, both of them acted unanimously.

14.3 Thus, this court is of the considered opinion that A1 can be convicted for the acts of Ashish Karmali even though he is not facing trial in this present case as common intention has been established.

15. Thus, in the light of discussion made above and considering the entire facts and circumstances of the case and materials available on record, the court finds and holds that the prosecution has successfully proved the charges u/s. 341/34 and 504/34, IPC beyond reasonable doubt against A1. The prosecution has however, failed to prove the charge u/s. 323/34, IPC against A1. Hence, the A1 is held guilty for the offence u/s. 341/34 and 504/34, IPC. Accordingly, the bail of A1 is hereby cancelled and he is taken into custody. Put up for hearing on the point of sentence.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 19th December, 2022

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 19th December, 2022

**Later on,
19.12.2022**

HEARING ON THE POINT OF SENTENCE

16. Learned counsel of the convict person submitted that he is a first time offender and there is no evidence brought on record from the side of prosecution about the fact that the convict was previously convicted and also there is no evidence about criminal antecedent of the convict and as such prayed that to release the convict on due admonition in spite of passing of sentence and accordingly, prayed to pass necessary order in this regard.

17. Learned A.P.P submitted that after due discussions learned Court has rightly come to a firm conclusion that the convict person had committed the offence u/s. **341/34, 504/34 of I.P.C** and he is convicted accordingly and as such she prayed that maximum punishment be awarded to the convict and to pass necessary order in this regard.

18. After hearing both the sides, perusing the case record and considering the nature of the offence, this court is of the view that in this case convict person is not entitled to get benefit according to the provision of Probation of Offenders Act. No probation report is available on record. The guilt of the convict is quite clear in the crime he is convicted for. Hence, convict person namely **A1 Parasnath Mahto** is hereby sentenced as under:

Rank of the convict	Name of the Convict	Sections under which convicted	Sentence of imprisonment	Fine	Sentence in default of fine
A1	Parasnath Mahto	u/s. 341/34 of IPC	15 days SI	₹300/-	7 days SI
		u/s. 504/34 of IPC	01 month SI	₹3000/-	15 days SI

19. The Court is of the opinion that the aforesaid punishment is sufficient for the ends of justice and punishment given under both the sections shall run **concurrently**.

20. The period of detention in the custody, if any, during trial, be adjusted towards the substantive sentence as per provisions of section 428 of The Code of Criminal Procedure, 1973.

21. Let the copy of the judgment be provided to the accused person free of cost.

(Dictated and corrected)

Pronounced by me in open court.

Sd/-

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 19th December, 2022

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